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8 ARTEC GROUP, INC.,
9 Plaintiff,
10 v.
11 ANDREY KLIMOV, et al.,
12 Defendants.

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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 Case No. 15-cv-03449-RMW

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20 **ORDER GRANTING IN PART**
DEFENDANTS' MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER
AND PERSONAL JURISDICTION AND
FOR IMPROPER VENUE

21 Re: Dkt. No. 20

22 On October 26, 2015, defendants Anna Zevelyov, Andrey Klimov, Yulia Klimova, Anna
23 Stebleva, Olga Chernetskaya, Igor Poklad, Petr Parkhalin, Andrey Streltsov, Irina Drozdova, Olga
24 Zinchenko, Nikolay Kulikov, Alan Subin, 3D-Complect, A-Star, and ID-Wise filed a motion to
25 dismiss for lack of subject matter jurisdiction, lack of personal jurisdiction, and improper venue.
26 Dkt. No. 20. On November 9, 2015, in accordance with Federal Rule of Civil Procedure
27 41(a)(1)(A)(i), plaintiff Artec Group, Inc. voluntarily dismissed the complaint as to defendants
28 Anna Zevelyov, 3D-Complect, Igor Poklad, Peter Parkhalin, Olga Chernetskaya, Andrey
Streltsov, Irina Drozdova, Olga Zinchenko, Nikolay Kulikov, and Alan Subin. Dkt. No. 47. Artec
Group, Inc. now opposes the motion as to the remaining defendants¹—Andrey Klimov, Yulia

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1 Klimova, Anna Stebleva, ID-Wise, and A-Star. Dkt. No. 48. Defendants filed a reply on
2 November 16, 2015. Dkt. No. 54. Plaintiff filed objections to defendants' reply evidence. Dkt No.
3 73. A hearing was held on December 11, 2015. Having considered the arguments of the parties,
4 the court dismisses plaintiff's claims against defendants ID-Wise and A-Star. Defendants' motion
5 is otherwise denied.

6 **I. BACKGROUND**

7 This is a case about alleged trade secret misappropriation and breach of contract. On July
8 27, 2015, Artec Group, Inc. filed suit against fifteen defendants asserting seventeen different
9 causes of action. Dkt. No. 1. Plaintiff is a California corporation located in Palo Alto, which
10 manufactures 3D scanners and facial recognition devices. Compl. ¶ 1. Plaintiff Artec Group, Inc.
11 alleges that Andrey Klimov, CEO, Yulia Klimova, acting CFO, and Anna Stebleva, Vice
12 President of Business Development, conspired to steal trade secrets, hardware, and business
13 relationships from plaintiff and secretly formed the corporate defendants, ID-Wise and A-Star.
14 Compl. ¶¶ 54, 55. Artec Group, Inc. also alleges claims against ID-Wise and A-Star for, among
15 other things, tortious interference with contract, conversion, unfair competition, and false
16 advertising. *See, e.g.*, Compl. ¶¶ 181-92, 245-263. All three individual defendants are citizens and
17 residents of Russia. Compl. ¶¶ 3, 5, 6; Dkt. No. 20 at 11. ID-Wise is a Latvian company, and A-
18 Star is a Russian company. Compl. ¶¶ 18, 20; Dkt. No. 20 at 11.

19 **II. ANALYSIS**

20 **A. Subject Matter Jurisdiction**

21 Plaintiff asserts diversity as the basis for subject matter jurisdiction under 28 U.S.C. §
22 1332. Compl. ¶ 24. Defendants move to dismiss for lacks of subject matter jurisdiction because
23 both plaintiff Artec Group, Inc. and defendant Anna Zevelyov are citizens of the state of
24 California. Dkt. No. 20 at 8. Before opposing defendants' motion, plaintiff dismissed its claims
25 against plaintiff Anna Zevelyov, resolving any question as to complete diversity and mooting

26
27 represents that it is actively pursuing service. Dkt. No. 48 at 2 n.1.
28

1 plaintiff's motion to dismiss for lack of subject matter jurisdiction. Dkt No. 47. The five remaining
2 defendants now argue that the issue is not moot because plaintiff's counsel informed defendants
3 that plaintiff "plans to bring this case against Mr. Zevelyov again in state court," and that
4 defendants will remove any such related proceeding to federal court. Dkt. No. 54 at 4. Defendants
5 further argue that Anna Zevelyov is "an integral part" of all claims such that the lawsuit cannot
6 proceed without her. *Id.*

7 The complaint alleges complete diversity of citizenship, as well as the minimum amount in
8 controversy. *See Compl. ¶¶ 1, 3, 5, 6, 20, 21, 24.* Defendants cite no authority in support of their
9 position that the court may dismiss for lack of subject matter under these circumstances. The court
10 declines to dismiss for lack of subject matter based on solely on plaintiff's speculation as to future
11 events.

12 **B. Personal Jurisdiction**

13 In response to a motion to dismiss for lack of personal jurisdiction, "the plaintiff bears the
14 burden of demonstrating that jurisdiction is appropriate." *Schwarzenegger v. Fred Martin Motor*
15 *Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (citing *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir.
16 1990)). When a district court rules on a motion to dismiss for lack of personal jurisdiction without
17 holding an evidentiary hearing, the plaintiff need only make a *prima facie* showing of
18 jurisdictional facts, which, if true, would be sufficient to establish personal jurisdiction. *Doe v.*
19 *Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). If not directly controverted, the plaintiff's
20 version of the facts is taken as true for the purposes of the motion. *Id.* Conflicts between the facts
21 stated in the parties' affidavits are to be resolved in plaintiff's favor. *Dole Food Co. v. Watts*, 303
22 F.3d 1104, 1108 (9th Cir. 2002); *Bancroft & Masters, Inc. v. Augusta Nat'l, Inc.*, 223 F.3d 1082,
23 1087 (9th Cir. 2000).

24 Plaintiff asserts that the court has general personal jurisdiction over Andrey Klimov, Yulia
25 Klimova, and Anna Stebleva, arguing that these defendants were "doing business in California."
26 Dkt. No. 48 at 15-16. Plaintiff also asserts that the court has specific personal jurisdiction over all
27 five defendants based on 1) letters from counsel threatening litigation and 2) defendants'

1 relationships with Artec Group, Inc. Dkt. No. 48 at 16-20. The court finds specific personal
2 jurisdiction over Andrey Klimov, Yulia Klimova, and Anna Stebleva, but finds no basis for the
3 exercise of personal jurisdiction over ID-Star and A-Star. Because the court finds that it has
4 specific personal jurisdiction over the individual defendants, this opinion does not address general
5 personal jurisdiction.

6 For specific personal jurisdiction to exist, the relationship between defendant and the
7 forum “must arise out of contacts that the ‘defendant *himself* ‘creates with the forum State.’”
8 *Walden v. Fiore*, 134 S. Ct. 1115, 1122, 188 L. Ed. 2d 12 (2014) (quoting *Burger King Corp. v.*
9 *Rudzewicz*, 471 U.S. 462, 475 (1985)). The analysis “looks to the defendant’s contacts with the
10 forum State itself, not the defendant’s contacts with persons who reside there.” *Walden*, 134 S. Ct.
11 at 1122. The Ninth Circuit has articulated the following three-prong test for analyzing a claim of
12 specific jurisdiction: (1) The non-resident defendant must purposefully direct activities or
13 consummate some transaction with the forum or resident thereof; or perform some act by which he
14 purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking
15 the benefits and protection of its laws; (2) the claim must be one which arises out of or is related to
16 the defendant’s forum-related activities; and (3) the exercise of jurisdiction must comport with fair
17 play and substantial justice. *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802
18 (9th Cir. 2004). The plaintiff must prove the first two prongs, at which point, “the burden shifts to
19 the defendant to set forth a compelling case that the exercise of jurisdiction would not be
20 reasonable.” *Picot v. Weston*, 780 F.3d 1206, 1211-12 (2015) (quotations omitted).

21 **1. Letters from Counsel**

22 In plaintiff’s view, all five defendants have “purposefully availed and directed themselves
23 to the benefits and protections of the forum” by threatening litigation against plaintiff in
24 correspondence from counsel. Dkt. No. 48 at 9. In contrast, defendants view the letters as “merely
25 random and attenuated contact” that does not constitute invocation of the benefits and protections
26 of the forum state courts and law. Dkt. 20 at 15 (citing *Picot v. Weston*, 780 F.3d 1206 (9th Cir.
27 2015)). The court is not persuaded that the letters cited by plaintiff, by themselves, support a

1 finding of specific personal jurisdiction.

2 Plaintiff cites six letters in total. Dkt. No. 48 at 9-13. The first letter and second letters are
3 both sent on behalf of “Ms. Yulia Klimova, Mr. Andrey Klimov, Ms. Anna Stebleva and Ms.
4 Anna Zevelyov, co-founders and shareholders of A-STAR LLC.” Dkt. Nos. 51-1; 51-2. The first
5 letter is addressed to Mr. Leonard Grayver, counsel for plaintiff, and demands that Mr. Grayver
6 withdraw from representation of Artec Group, Inc. and other Artec Companies. Dkt. Nos. 51-1.²
7 The second is addressed to law firm of Greenberg Whitcombe, Takeuchi, Gibson & Grayver LLP
8 and demands that the firm cease representation of Artec Group, Inc. and other Artec companies.
9 51-2. The third, fifth, and sixth letters cited by plaintiff are sent on behalf Mr. Andrey Klimov
10 only and involve shareholder demands on Artec Group, Inc. *See* Dkt Nos. 51-3; 52-1; 52-2.

11 The court finds that these five letters cannot support jurisdiction over any defendant
12 because plaintiff’s claims do not arise out of or relate to either shareholder demands or demands
13 that plaintiff’s counsel withdraw from representation. *See Schwarzenegger v. Fred Martin Motor*
14 *Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (“claim must be one which arises out of or is related to the
15 defendant’s forum-related activities”). Plaintiff does not assert that it would have suffered the
16 harms alleged in the complaint “but for” these demands; therefore, the second prong of the
17 specific jurisdiction test cannot be met. *See Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316,
18 1322 (9th Cir. 1998).

19 The fourth letter cited by plaintiff is sent on behalf “Ms. Yulia Klimova, Mr. Andrey
20 Klimov, Ms. Anna Stebleva and Ms. Anna Zevelyov, co-founders and shareholders of A-STAR
21 LLC and ID-WISE SIA.” This letter is a cease and desist letter, threatening to “bring a lawsuit
22 against Artec Group” if the president, corporate counsel, and Artec Group, Inc. itself, do not
23 “cease and formally withdraw all defamatory libelous and slanderous claims” that the products of
24 A-Star and ID-Wise “infringe on your intellectual property, are stolen or counterfeit.” Dkt. No. 51-

25 _____
26 ² The court notes that plaintiff’s opposition lists the document filed as Exhibit B to the Grayver
27 Declaration (Dkt. No. 52-2) twice, citing to it as “Letter One” and “Letter Two.” *See* Dkt. No. 48
28 at 9-10. The court believes this is a typographical error, and that plaintiff intends to refer to
Exhibit A to the Grayver Declaration (Dkt. No. 51-1) as “Letter One.”

4. While this letter relates to the claims of the complaint, the court finds that under *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199 (9th Cir. 2006), the fourth letter does not constitute purposeful availment or direction.

In support of this argument, plaintiff relies on two Ninth Circuit opinions on specific personal jurisdiction—*Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199 (9th Cir. 2006) and *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 1082 (9th Cir. 2000). The *Yahoo!* court noted that a cease and desist letter may serve as the basis for personal jurisdiction, but distinguished between “a normal cease and desist letter” and one that was “abusive, tortious or otherwise wrongful.” 433 F.3d at 1208-09 (distinguishing normal letter from those at issue in *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 1082 (9th Cir. 2000)). The *Yahoo!* court noted that there are “strong policy reasons to encourage cease and desist letters” because such letters may be used to “facilitate resolution of a dispute without resort to litigation.” 433 F.3d at 1208. The court held that a “cease and desist letter is not in and of itself sufficient to establish personal jurisdiction over the sender of the letter.” *Id.*

Plaintiff alleges that, like the letters in *Bancroft*, the letters at issue in this case directed plaintiff to perform significant acts in California, and therefore did “more than warn or threaten.” See Dkt. No. 48 at 13-14. The *Bancroft* letter would have operated automatically to prevent [plaintiff] from using its website had [plaintiff] not filed suit.” 223 F.3d at 1089. Plaintiff’s argument is that defendants’ letters have caused “Artec California to act in response to their shareholder demands.” Dkt. No. 48 at 14.

However, as explained above, plaintiff’s claims do not arise from shareholder demands. Plaintiff offers no explanation for how the fourth letter does more “more than warn or threaten.” Therefore, the court views this letter as a “normal” cease and desist letters that does not establish specific personal jurisdiction. *Yahoo!*, 433 F.3d at 1208-09; see also *Inamed Corp. v. Kuzmak*, 249 F.3d 1356, 1361 (Fed. Cir. 2001) (“We have, however, repeatedly held that the sending of an infringement letter [threatening patent litigation], without more, is insufficient to satisfy the requirements of due process when exercising jurisdiction over an out-of-state patentee.”).

1 **2. Relationships with Artec Group, Inc.**

2 Plaintiff also asserts that specific personal jurisdiction exists as to all defendants based on
3 defendants' relationship with plaintiff. The court finds that all three prongs of the test for specific
4 personal jurisdiction are met.

5 **a. Purposeful Availment or Direction**

6 The first prong of specific jurisdiction is treated somewhat differently in tort and contract
7 cases. In contract cases, the inquiry concerns whether a defendant "purposefully avails itself of the
8 privilege of conducting activities" or "consummate[s][a] transaction" in the forum, focusing on
activities such as delivering goods or executing a contract. *See Schwarzenegger*, 374 F.3d at 802.

9 By contrast, in tort cases, the inquiry is typically whether a defendant "purposefully
10 direct[s] his activities" at the forum state. Courts apply the *Calder* "effects" test, which focuses on
11 the forum in which the defendant's actions were felt, whether or not the actions themselves
12 occurred within the forum. *See Schwarzenegger*, 374 F.3d at 803 (citing *Calder v. Jones*, 465 U.S.
13 783, 789-90 (1984)). The Ninth Circuit has interpreted *Calder* to impose three requirements. The
14 defendant must have (1) committed an intentional act, (2) expressly aimed at the forum state,
15 which (3) causes harm that the defendant knew was likely to be suffered in the forum state.
Yahoo!, 433 F.3d at 1206 (citing *Schwarzenegger*, 374 F.3d at 803).

16 In this case, plaintiff asserts a variety of claims, including claims sounding in tort and
17 claims in contract, and the parties address both purposeful "availment" and "direction" in their
18 briefs. Dkt. No. 20 at 14-17; Dkt. No. 48 at 26-20. The court finds that the allegations involving
19 the individual defendants are sufficient to establish both purposeful availment for plaintiff's
20 contract claims and purposeful direction for the tort claims under the *Calder* effects test.

21 **i. Contract Claims**

22 It is undisputed that the individual defendants were never based in California, and thus the
23 existence of the contracts themselves is not enough to establish purposeful availment. *See Picot v.*
24 *Weston*, 780 F.3d 1206, 1212-13 (9th Cir. 2015) ("the fact that a contract envisions one party
25 discharging his obligations in the forum state cannot, standing alone, justify the exercise of
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1 jurisdiction over another party to the contract"). Nor do short trips to California taken by
2 individual defendants, regardless of whether they were reimbursed for expenses, suffice by
3 themselves. *Id.* at 1213 (two trips to California of about two weeks each that held "no special
4 place in his performance under the agreement as a whole" did not create "substantial connection"
5 to forum where the bulk of defendant's efforts under the contract were centered in Michigan).

6 However, in this case, plaintiff has also submitted evidence and declarations alleging that
7 defendants' employment efforts were centered in California. *See, e.g.*, Dkt. No. 50 ¶¶ 24, 26, 31,
8 38 (declaration of Artyom Yukhim alleging that defendants' employment included for example,
9 direction of California employees, negotiation of contracts on behalf of a California company, and
10 interaction with counsel and accountants regarding California tax and legal issues). Furthermore,
11 plaintiff has alleged that the employment and non-disclosure contracts specify application of
12 California law (Compl. ¶¶ 40, 41), which strengthens the defendants' contractual ties to the forum.
13 *See Vance's Foods, Inc. v. Special Diets Europe Ltd.*, No. 2:11-CV-02943-MCE, 2012 WL
14 1353898, at *6 (E.D. Cal. Apr. 16, 2012) ("While the choice-of-law clause is not sufficient by
15 itself to determine that Defendants availed themselves of the benefits and protections of the laws
16 of the forum state, it is a relevant factor.") (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. at
17 482). Therefore, the court finds sufficient purposeful availment to support the exercise of specific
18 personal jurisdiction over the individual defendants on plaintiff's contract claims.

19 ii. Tort Claims

20 Moreover, under the *Calder* test for tort claims, plaintiff sufficiently alleges purposeful
21 direction. Under the first prong of the *Calder* test, "the defendant must act with the 'intent to
22 perform an actual, physical act in the real world;'" this prong is easily met by plaintiff's
23 allegations in the complaint regarding misappropriation of trade secrets and other intentional torts.
24 *See, e.g., Picot v. Weston*, 780 F.3d 1206, 1214 (9th Cir. 2015) (quoting *Schwarzenegger*, 374
25 F.3d at 806 and finding first prong easily met by allegations that defendant spoke with third party
26 about technology).

27 The second prong of the test is satisfied because defendants directed conduct at a

1 California-based plaintiff by allegedly violating the terms of the contracts they entered into with
2 plaintiff. *See Thomas Weisel Partners LLC v. BNP Paribas*, No. C 07-6198 MHP, 2008 WL
3 3977887, at *6 (N.D. Cal. Aug. 26, 2008) (“By allegedly violating the terms of [his employment
4 contract containing confidentiality provision], Chakravarty directed his wrongful conduct at
5 California-based TWP LLC.”).

6 Defendants argue against a finding of purposeful direction based on *Picot v. Weston*. The
7 *Picot* court found that the defendant’s tortious conduct was not expressly aimed at California
8 because the alleged oral contract did not have anything to do with California, and all of the
9 defendant’s actions were taken “without entering California, contacting any person in California,
10 or otherwise reaching out to California.” 780 F.3d at 1215. In this case, however, plaintiff Artec
11 Group, Inc. alleges that the tortious conduct occurred while the three individual defendants held
12 themselves out as officers of the California entity. *See, e.g.*, Compl. ¶ 51; Dkt. No. 50-1, 50-8
13 (employment agreements); Dkt. No. 50-10 (email where Anna Stebleva’s title is listed as “Vice
14 President, Business Development, Artec Group, Inc.”); Dkt. No. 50-2 (email from Yulia Klimova
15 regarding California sales and taxes and listing her title as “Chief Financial Officer” with an Artec
16 Group email address); Dkt. No. 50-12 (letter signed by Andrey Klimov as CEO of Artec Group,
17 Inc.); Dkt. 51-1 (counsel for defendants referring to Mr. Klimov as “Director and CEO, as well as
18 shareholder”). Moreover, plaintiff alleges that defendants’ tortious conduct violates the terms of
19 agreements that are explicitly governed by California law. *See, e.g.*, Compl. ¶¶ 40, 41; Dkt. No.
20 50-1 at 11. Therefore, the court finds that allegedly tortious conduct was expressly aimed at the
21 forum.

22 The third *Calder* test element is also met. As noted above, plaintiff produced evidence that
23 the individual defendants performed work for Artec Group, Inc. in some executive capacity. All
24 three individual defendants would have some understanding of the business relationships affected
25 by their alleged breach of the agreements, and they would know that harm was likely to be
26 suffered in California. *See Thomas Weisel Partners*, 2008 WL 3977887 at *6 (“Chakravarty, as
27 Director of Discovery Research, understood the business relationship between TWP LLC and

1 TWIPL and that his alleged conduct would directly harm TWP LLC.”). Accordingly, the court
2 concludes that the purposeful direction element is satisfied as to the three remaining individual
3 defendants.

4 **b. Arises Out Of**

5 The second prong of the test for specific jurisdiction requires that the claim against the
6 defendant be one which arises out of or relates to the defendant’s forum-related activities. This is
7 “measured in terms of but for causation.” *Bancroft*, 223 F.3d at 1088, *see also Panavision*, 141
8 F.3d at 1322 (“We must determine if the plaintiff.... would not have been injured but for the
9 defendant’s ... conduct directed toward [plaintiff] in [the forum].”). Here, plaintiff alleges that the
10 defendants’ activities caused harm in this district which would not have otherwise arisen absent
11 the employment relationships with plaintiff. Defendants do not challenge this prong of the specific
12 jurisdiction test. Therefore, the court finds that the “arising out of” requirement is met.

13 **c. Fair Play and Substantial Justice**

14 The third prong of the test for specific jurisdiction provides that the exercise of personal
15 jurisdiction must comport with fair play and substantial justice. Jurisdiction is presumed to be
16 reasonable once the first two prongs of the specific jurisdiction test have been met. *See*
17 *Schwarzenegger*, 374 F.3d at 802. The court considers the following seven factors:

18 (1) the extent of the defendants’ purposeful interjection into the forum state’s
19 affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of
20 conflict with the sovereignty of the defendants’ state; (4) the forum state’s interest
21 in adjudicating the dispute; (5) the most efficient judicial resolution of the
22 controversy; (6) the importance of the forum to the plaintiff’s interest in convenient
23 and effective relief; and (7) the existence of an alternative forum. None of the
24 factors is dispositive in itself; instead, [the court] must balance all seven.

25 *Core-Vent Corp. v. Nobel Industries*, 11 F.3d 1482, 1487-88 (9th Cir. 1993). Defendants argue
26 that the exercise of personal jurisdiction by this court would be unreasonable based on these
27 factors. Dkt. No. 20 at 17-19. The court disagrees.

28 Although the individual defendants are located in Russia, the degree of interjection into the
29 forum state’s affairs is somewhat more than minimal here. Accepting plaintiff’s factual allegations
as true, the individual defendants have interjected themselves by entering into employment
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1 contracts with a California company. The contracts are governed by California law. The court
2 acknowledges that it will be burdensome for defendants to litigate in the Northern District of
3 California. *See, e.g., Asahi Metal Indus. Co. v. Super. Ct. of Cal., Solano City*, 480 U.S. 102, 114
4 (1987) (“The unique burdens placed upon one who must defend oneself in a foreign legal system
5 should have significant weight in assessing the reasonableness of stretching the long arm of
6 personal jurisdiction over national borders.”). However, “[m]odern advances in communications
7 and transportation have significantly reduced the burden of litigating in another country.” *Sinatra*
8 *v. Nat'l Enquirer, Inc.*, 854 F.2d 1191, 1199 (9th Cir. 1988). Courts routinely reject claims by
9 foreign defendants that it would be too burdensome for them to defend themselves outside their
10 home country, particularly when those companies “use technology and transportation to carry on
11 the business relationship at issue.” *Pandigital, Inc. v. DistriPartners B.V.*, No. C 12–01588–CW,
12 2012 WL 6553998, at *4 (N.D. Cal. Dec. 14, 2012).

13 Defendants have not identified a conflict with any other sovereignty, which weighs in
14 favor of jurisdiction. California has a strong interest in providing its residents a convenient forum
15 for redressing injuries caused by out-of-state defendants. *See, e.g., Burger King Corp. v.*
16 *Rudzewicz*, 471 U.S. at 473 (recognizing a state’s “manifest interest” in providing a convenient
17 forum for residents). Defendants have not shown that another jurisdiction would be more efficient
18 for resolving this dispute, and it appears that relevant documents and witnesses may be found in
19 both districts.

20 Although defendants bear the overall burden to show that exercise of personal jurisdiction
21 would be unreasonable, plaintiff “bears the burden of proving the unavailability of an alternative
22 forum.” *Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1133–34 (9th Cir.
23 2003) (citing *Core–Vent Corp.*, 11 F.3d at 490.). Plaintiff concedes that “any forum is in theory
24 available,” but argues that California is the appropriate place to adjudicate California law. This
25 factor is neutral.

26 On balance, the court concludes that the exercise of personal jurisdiction sufficiently
27 comports with substantial justice and fair play.

C. Corporate Defendants

Plaintiff claims that the court has personal jurisdiction over A-Star and ID-Wise because these companies “are the alter-egos of Klimov and his co-conspirators, all of whom are among the founders and shareholders of these two companies.” Dkt. No. 48 at 8-9. Although contacts may be attributed to an alter ego for purposes of determining personal jurisdiction, in order to make a sufficient showing as to alter ego, a plaintiff “must make out a *prima facie* case (1) that there is such unity of interest and ownership that the separate personalities of the two entities no longer exist and (2) that failure to disregard their separate identities would result in fraud or injustice.” *Harris Rutsky & Co. Ins. Services*, 328 F. 3d at 1134 (internal citations omitted). Plaintiff’s bare allegations that A-Star and ID-Wise are alter egos of the individual defendants are insufficient. *See Hall v. Club Corp. of Am.*, 33 F. App’x 873, 875 (9th Cir. 2002) (allegation that defendant entity is the “alter ego” of another entity “would not, *per se*, confer specific jurisdiction over the former entity”); *In re Conseco Life Ins. Co .Life Trend Ins. Mktg. & Sales Practice Litig.*, No. C 10-MD-02124 SI, 2013 WL 6073425, at *6 (N.D. Cal. Nov. 18, 2013) (“plaintiffs have not demonstrated that the Court can exercise general or specific jurisdiction over these defendants, absent a showing that they are the agent or alter ego of defendant Conseco Life”). Despite its finding that it has specific personal jurisdiction over the three individual defendants, the court finds no basis to impute the contacts of the individuals to the two corporate defendants.

D. Venue

Where federal subject matter jurisdiction is based on diversity, venue is proper in only the following judicial districts: (1) if all defendants reside in the same state, a district where any defendant resides; or (2) a district in which a “substantial part of the events or omissions” on which the claim is based occurred; or (3) if there is no district in which the action may otherwise be brought, “a district in which the defendants are subject to personal jurisdiction at the time the action is commenced.” 28 U.S.C. § 1331(b). Plaintiff has alleged that venue is proper in the Northern District under 28 U.S.C. § 1331(b)(2) on the grounds that “a substantial part of the events or omissions giving rise to ARTEC’s claim occurred in the district.” Compl. ¶ 25. The

1 statute “does not require that a majority of the events have occurred in the district where suit is
2 filed, nor does it require that the events in that district predominate.” *Rodriguez v. Cal. Highway*
3 *Patrol*, 89 F. Supp. 2d 1131, 1136 (N.D. Cal. 2000). Venue is proper if “*significant* events or
4 omissions material to the plaintiff’s claim must have occurred in the district in question, even if
5 other material events occurred elsewhere.” *Richmond Techs., Inc. v. Aumtech Bus. Solutions*, 2011
6 WL 2607158, at *10 (N.D. Cal. July 1, 2011) (citation omitted; emphasis in original).

7 Defendants argue that because the complaint alleges that the individual defendants are
8 residents of Russia, it does not include allegations as to events or omissions occurring in this
9 district. Dkt. 20 at 19-20. However, in California, the locus of the injury is a relevant factor in a
10 tort action. *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1076 (9th Cir. 2001) (“at least one of the
11 ‘harms’ suffered by Plaintiffs is akin to the tort of invasion of privacy and was felt in Nevada.
12 Accordingly, a substantial part of the events giving rise to the claim occurred in Nevada.”). Here,
13 Artec Group, Inc. is a California corporation with its principal place of business located within the
14 Northern District of California. Compl. ¶ 1. Therefore, the harm plaintiff alleges to have suffered
15 as a result of defendants’ conduct was felt in the Northern District of California. See *San*
16 *Francisco Residence Club, Inc. v. Leader Bulso & Nolan, PLC*, No. C-13-0844 EMC, 2013 WL
17 2050884, at *5 (N.D. Cal. May 14, 2013) (“Finally, and most importantly, the harms suffered by
18 Plaintiffs are in large part torts (e.g., breach of fiduciary duty and malpractice) and were felt in
19 California, where they reside, which under Ninth Circuit law, is enough to satisfy the ‘substantial
20 part of the events’ test.”); *California Closet Co. v. Ebbn*, No. C 08-0625, 2008 WL 1766767, at
21 *7 (N.D. Cal. Apr. 15, 2008) (finding venue proper where plaintiff’s claims arose out of the
22 franchise agreement or the franchise relationship with California plaintiff).

23 Moreover, the venue statute includes a fallback provision that allows a civil action to be
24 brought in “any judicial district in which any defendant is subject to the court’s personal
25 jurisdiction with respect to such action,” in the case that “there is no district in which an action
26 may otherwise be brought.” 28 U.S.C. § 1391(b)(3). Plaintiff has established that there is specific
27 personal jurisdiction over the individual defendants, and defendants have not suggested that there
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1 is any other district in which this action might be brought. Therefore, the court finds that venue is
2 proper in the Northern District of California as to the claims against Andrey Klimov, Yulia
3 Klimova, and Anna Stebleva.

4 **III. CONCLUSION**

5 For the foregoing reasons, the court grants defendants' motion to dismiss as to defendants
6 ID-Wise and A-Star ID with leave to amend. The court denies defendants' motion to dismiss as to
7 defendants Andrey Klimov, Yulia Klimova, and Anna Stebleva.

8 **IT IS SO ORDERED.**

9 Dated: December 22, 2015



10 Ronald M. Whyte
11 United States District Judge

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United States District Court
Northern District of California